

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

STEPHEN KELLY,

Plaintiff,

v.

8:20-CV-0721
(GTS/CFH)

JEFFREY M. GUZY,

Defendant.

APPEARANCES:

STEPHEN KELLY, 18-A-3202
Plaintiff, *Pro Se*
Gouverneur Correctional Facility
P.O. Box 480
Gouverneur, New York 13642

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Stephen Kelly (“Plaintiff”) against Jeffrey M. Guzy (“Defendant”), is United States Magistrate Judge Christian F. Hummel’s Report-Recommendation reviewing the pleading sufficiency of Plaintiff’s Amended Complaint (Dkt. No. 6), and recommending that any claims asserted therein against Judge Carter be dismissed with prejudice as barred by the doctrine of judicial immunity, that Plaintiff’s Section 1983 malicious prosecution claim be dismissed without prejudice, and that his Fourth Amendment false arrest claim survive the Court’s sua sponte review. (Dkt. No. 8.)

Plaintiff has not filed an Objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant

papers herein, the Court can find no clear error in Magistrate Judge Hummel's thorough Report-Recommendation.¹ Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 8) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that, to the extent that Plaintiff's Amended Complaint (Dkt. No. 6) attempts to assert any claims against Judge Carter, those claims are *sua sponte* **DISMISSED** with **prejudice** for failure to state a claim as barred by the doctrine of judicial immunity;² and it is further

ORDERED that Plaintiff's Section 1983 malicious prosecution claim in his Amended Complaint is **DISMISSED** without **prejudice** to refiling during the pendency of this action

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear-error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a clear-error review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

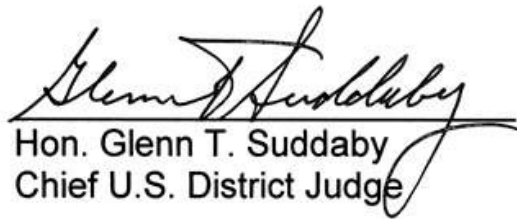
² The Court notes that, at least in the Second Circuit, a dismissal based on the doctrine of judicial immunity arises under Fed. R. Civ. P. 12(b)(6) (which permits the dismissal to be with prejudice) and not Fed. R. Civ. P. 12(b)(1) (which permits the dismissal to be merely without prejudice). See *Butcher v. Wendt*, 975 F.3d 236, 241 (2d Cir. 2020) ("Because Butcher's claims against Justice Farneti are barred by absolute judicial immunity, they were correctly dismissed under Rule 12(b)(6).").

upon a successful motion to amend pursuant to Fed. R. Civ. P. 15 and Local Rule 15.1; and it is further

ORDERED that Plaintiff's Fourth Amendment false arrest claim **SURVIVES** the Court's *sua sponte* review of his Amended Complaint; and it is further

ORDERED that the case is returned to Magistrate Judge Hummel to address whether service of process is appropriate at this time.

Dated: January 18, 2022
Syracuse, New York



Hon. Glenn T. Suddaby
Chief U.S. District Judge